

No. 187.

An Act

Relating to Insolvent Debtors.

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I. JURISDICTION OF THE COURTS, AND HOW EXERCISED.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the several courts of Common Pleas of this commonwealth, shall have power to grant relief to insolvent debtors residing, or being within this commonwealth, on application made in the manner hereinafter provided.

SECTION 2. The jurisdiction of the said courts may be exercised as follows, and not otherwise, viz:

- I. In the case of a person arrested or detained by virtue of any process issued in any civil suit or proceeding, for the recovery of money or damages, or for the nonperformance of any decree or sentence for the payment of money, without collusion with the plaintiff, the court of Common Pleas of the county in which such debtor shall be arrested or detained, shall have power to grant relief as aforesaid.

II. In the case of a person held on a bail piece issued in any such suit or proceeding, the court of Common Pleas of the county in which the suit was instituted, shall have power to grant relief, as aforesaid.

III. In the case of a debtor not arrested, detained, or held as aforesaid, such power may be exercised by the court of Common Pleas of the county in which such debtor shall reside.

SECTION 3. But no debtor shall be entitled to relief under this act, unless he shall have resided within this commonwealth, for six months immediately preceding his application to the court, or shall have been confined in jail for three months immediately preceding such application.

II. PROCEEDINGS TO OBTAIN A DISCHARGE FROM CONFINEMENT OR CUSTODY.

SECTION 4. It shall be lawful for any judge of the court of Common Pleas aforesaid, or for the prothonotary of such court, to make an order for discharge of any debtor arrested, detained, or held by virtue of any process or bail piece, as aforesaid, on his giving a bond to the plaintiff in such suit, or proceeding in such amount, and with such security as shall be approved by such judge or prothonotary.

SECTION 5. The order of the judge or prothonotary as aforesaid, shall direct the officer or other person having such debtor in custody or confinement, forthwith to discharge such debtor, on his paying the jail fees, if any be due.

SECTION 6. The condition of the bond to be given as aforesaid, shall be, that the said debtor shall appear at the next term of the court of Common Pleas of the said county, and then and there present his petition, for the benefit of the insolvent laws of this commonwealth, and comply with all the requisitions of the said law, and abide all the orders of the said court in that behalf, or in default thereof, and if he fail in obtaining his discharge as an insolvent debtor, that he shall surrender himself to the jail of the said county.

SECTION 7. The officer or other person having such debtor in confinement or custody, shall be exonerated, on making a return of the order aforesaid, on the process by which such debtor was held, and such order being filed with any officer or magistrate, by whom any bail piece was issued, shall entitle the bail to be exonerated, as effectually as if the debtor had been surrendered and confined in prison on such bail piece.

SECTION 8: *Provided*, That nothing herein contained, shall prevent a debtor arrested on a bail piece, from giving new bail, according to law, and obtaining his release thereby.

III. OF THE PETITION, AND PROCEEDINGS THEREON.

SECTION 9. Every petition for relief, as aforesaid, shall be accompanied with the following schedules:

- I. A statement of all the estate, effects and property of the petitioner, wheresoever situate, and of whatsoever kind.
- II. A statement of the debts due by him, containing the names of his creditors, the amount due to each, and the nature or character of the debt, so far as he can ascertain the same.
- III. A statement of the causes of his insolvency, and of the extent of his losses, if any.

And the facts set forth in such petition and statements, shall be verified by the oath or affirmation of the petitioner.

SECTION 10. It shall be the duty of the court to which any such petition may be presented, to fix a time for the hearing of the same, either by a general rule, or by an order to be made in the particular cause, if the circumstances of the case shall require it.

SECTION 11. Notice of the time and place fixed for the hearing, as aforesaid, shall be given by the petitioner to his creditors, at least fifteen days before such hearing, either personally, or by advertisement published in one or more newspapers, as the court may direct.

SECTION 12. At the time and place fixed for the hearing, the petitioner shall exhibit to the court a just and true account of his debts, credits and estate, whatsoever, and wheresoever situate, and if so required, shall produce all books and papers in his possession, or under his control, relating to his business and estate, and shall answer all questions that may be put to him by the court, or (under their control) on the part of his creditors, touching the same, and shall satisfy the court that he has not concealed or conveyed to any person whomsoever, for the use of himself, or any of his family or friends, or whereby to expect any future benefit to him or them, any part of his estate, effects or credits.

SECTION 13. If upon examination of the petitioner as aforesaid, there shall not arise a strong presumption of fraud, and if the petitioner shall in other respects appear to be entitled to relief, the court shall direct an oath or affirmation, in the following form, to be administered to such petitioner.

"I, A B, do (swear or affirm) that I will deliver up and transfer to my trustees, for the use of my creditors, all my property that I have, or claim any title to, or interest in, at this time, and all debts, rights, and claims which I now have, or that I am in any respect entitled to, in possession, reversion, or remainder, and that I have not, directly or indirectly, at any time, given, sold, conveyed, leased, disposed of, or entrusted any part of my property, rights, or claims, to any person, whereby to defraud my creditors, or any of them, or

to secure, receive, or expect any profit, benefit, or advantage thereby."

SECTION 14. The petitioner shall thereupon, execute an assignment of all his estate, property, and effects whatsoever, to such trustees as may be nominated by two-thirds in number and value of the creditors then attending, either in person or by attorney, or in default of such nomination, as shall be appointed by the court.

SECTION 15. When such assignment shall have executed, the court shall make an order that the petitioner shall not at any time thereafter, be liable to imprisonment, by reason of any judgment or decree obtained for the payment of money only, or for any debt, damages, costs, or sum of money, contracted, accrued, or occasioned and due before the time of such order.

SECTION 16. The order of the court as aforesaid, shall be a sufficient warrant for the discharge of the petitioner from imprisonment, if he shall be in confinement at the time of such order, or shall be at any time afterwards arrested, by virtue of process in any action or proceeding for the recovery of any debt or demand, as aforesaid, on his giving a warrant of attorney, if arrested on mesne process, to appear to the action, and plead thereto.

SECTION 17. *Provided*, That if the petitioner shall be in custody or confinement at the time of such order, by virtue of process issued upon any judgment obtained against him in an action founded upon actual force, or upon actual fraud or deceit, or in an action for a libel or slander, malicious prosecution or conspiracy, or in an action for seduction, or criminal conversation, where the damages found by the jury shall exceed the sum of one hundred dollars; or if such petitioner shall be afterwards arrested by virtue of process issued upon any such judgment obtained against him previously to such order, he shall not be entitled to be discharged from such imprisonment or arrest, until he shall have been in actual confinement, during a term of at least sixty days.

SECTION 18. It shall also be lawful for the said court, upon the application of the trustees of any insolvent, to make an order for the appearance of such insolvent, at such time and place as may be fixed by the court, to answer upon any interrogatory, or otherwise, to such questions as may be propounded on the part of the said trustees, touching the estate and property of such insolvent at the time of his assignment to the said trustees, and to enforce their orders in the premises, by attachment.

SECTION 19. It shall be lawful for the court, either before or after the discharge of any petitioner as aforesaid, to make an order upon such petitioner to produce and deposit, either with the prothonotary of the court, or with the trustees, all books, documents, papers, and muniments of title, in his

possession, or under his control, relating to the estate and property of such petitioner, and to enforce such order by attachment.

IV. OF THE POWERS AND DUTIES OF THE TRUSTEES, AND OF DISTRIBUTION AMONG THE CREDITORS OF AN INSOLVENT.

SECTION 20. Every trustee of an insolvent as aforesaid, shall, before acting as such, give bond to the commonwealth, in such penalty, and with such security as shall be satisfactory to the court, with condition for the faithful execution of his trust.

SECTION 21. It shall be the duty of the said trustees, immediately after giving bond as aforesaid, to give notice of their appointment, in at least one newspaper published in the same county, during at least four weeks, together with their names and places of abode, and they shall in such notice, require all persons indebted to such insolvent, or holding property belonging to him, to pay and deliver all such sums of money and property due, and belonging to such insolvent, to the said trustees, and they shall also therein desire all creditors of the insolvent, to present their respective accounts or demands.

SECTION 22. No action or other legal proceedings instituted by any such debtor, and pending at the time of the appointment of a trustee or trustees, as aforesaid, shall abate thereby, but the same shall be continued by, and enure to the benefit of such trustee or trustees.

SECTION 23. The trustees of such insolvent, shall have power to compound with his debtors, in case of controversy, and to settle the same, by arbitration or otherwise, and the same right to set-off shall exist, where there shall be mutual debts between the insolvent and such debtors, as in other cases.

SECTION 24. It shall be the duty of such trustees, forthwith to proceed to collect the debts, and to convert the real and personal estate of such insolvent into cash, and within twelve months from the time of their appointment, to make distribution of the nett proceeds thereof, in the manner hereinafter directed: *Provided*, That it shall be competent for the court, on application by such trustees, to enlarge the time for such distribution, or to order distribution from time to time, if any legal proceeding should be pending, or any estate or effects of such insolvent should remain undisposed of, or be discovered after the period fixed for such distribution.

SECTION 25. It shall be the duty of the trustees, to appoint a certain time and place for receiving the proofs of the creditors, in support of their respective claims, of which public notice shall be given, and on the day so appointed, they shall proceed to receive the proof of the several creditors, and shall determine upon the same, and having stated their

accounts, and ascertained the proportionate sum payable to each creditor, shall file their report of the same in the office of the prothonotary of the court, in which their appointment took place.

SECTION 26. It shall be the duty of such prothonotary, to give public notice of the filing of such report, by advertisement, in the manner directed by law, in the case of the accounts of assignees under a voluntary assignment, and at the next stated term of the court, after the filing of the report, if exceptions shall not be presented at such time as may be directed by the rules of such court, the report may be confirmed by the court, and the trustees shall thereupon, make distribution accordingly.

SECTION 27. *Provided*, 1. That the fees and charges of maintainance due to the jailor at the time of the discharge of the debtor, being approved by the court, shall be first paid out of the debtor's property, previous to any distribution: *And Provided*, 2. That no preference shall be allowed to debts due on specialties, but all bona fide mortgages, judgments, and executions, binding the real or personal estate of such insolvent, shall remain good and effectual in law, and shall be first satisfied out of the debtors estate, according to their priority of lien.

SECTION 28. When any rent shall be due by such insolvent at the time of his discharge, no goods or chattels upon the premises, in respect to which such rent shall be due, liable to distress, shall be removed, or disposed of, without the consent of the landlord, or other person to whom such rent shall be due and payable, until the same, not exceeding one year's rent, be paid, and such landlord, or other person, may proceed by distress, or otherwise, as he might have done before such discharge, to recover the same, not exceeding one year's rent, as aforesaid.

SECTION 29. If the whole of the estate shall not have been distributed upon such report, the trustees shall proceed to make a second dividend, of all such monies as shall come into their hands after the first dividend, and make report in like manner, and the same proceedings shall be had upon such report, as are hereinbefore provided, and so from time to time, until a distribution shall have been made of all the estate of such debtor.

SECTION 30. When the trustees shall have completed the distribution of the debtor's estate among the creditors, as aforesaid, they shall cause an account of the same to be stated, and filed in the office of the prothonotary aforesaid.

V. EFFECT OF THE DISCHARGE UPON THE PETITIONER, AND UPON OTHER PERSONS.

SECTION 31. Whenever the court shall have directed personal notice to be given to creditors, of the time and place

fixed for hearing the petition of any debtor, as aforesaid, the discharge of such debtor shall not affect the rights and proceedings of those to whom personal notice shall have been given, according to the order of the court.

SECTION 32. The discharge of any petitioner who may have been arrested or imprisoned in any other county than that of his residence, shall not protect him from arrest or imprisonment for any debt, except such as may be owing to the party at whose suit such debtor was arrested or imprisoned.

SECTION 33. The discharge of a debtor by virtue of this act, shall not acquit or release any other person from any debt, contract or engagement, or other liability, to which he was subject, but all other persons shall be answerable for the same, in like manner as if such discharge had not taken place.

VI. OF THE PROPERTY OF AN INSOLVENT AT THE TIME OF HIS DISCHARGE.

SECTION 34. The trustees appointed as aforesaid, shall be deemed to be vested with all the estate and property of the insolvent, at the time of filing his petition, subject to all liens by mortgage, judgment, or otherwise, existing at that date, and it shall be their duty to take the same into possession, and all books, vouchers, and papers relating to the same, and shall be capable of suing for and recovering, in their own names, all such estate and property, and all debts and things in action belonging or appertaining to such insolvent at the time of his petition, as aforesaid.

SECTION 35. *Provided*, I. That no purchase or assignment of the real estate, of such insolvent, situate within the county, made bona fide, and for a valuable consideration, before the date of the assignment to the said trustees, by or to any person not having actual notice or knowledge of the petition aforesaid, shall be invalidated or impeached thereby.

II. That no purchase or assignment of the real estate of such insolvent, situate in any other county, made bona fide, and for a valuable consideration, before the recording of the assignment to such trustees, in such other county, by or to any person not having actual notice or knowledge of such petition or assignment, shall be invalidated or impeached thereby.

III. That no purchase or assignment of the personal property of such insolvent, made bona fide, and for a valuable consideration, by or to any person not having actual notice or knowledge of such petition or assignment, shall be invalidated or impeached thereby.

IV. That if any person indebted to such insolvent, or having possession of any of his property, shall bona fide pay the said debt, or deliver the said property to the said insolvent, before public notice given by the said trustees, as herein provided, and without having had actual notice or knowledge of such petition or assignment, he shall not be liable to pay or deliver the same to such trustees.

V. That every insolvent shall be entitled to retain all such articles as may by law be exempted from levy and sale, upon execution.

SECTION 36. If any insolvent as aforesaid, shall, prior to such assignment, have conveyed or transferred any part of his real or personal estate to his wife and children, or either of them, or to any person in trust for them, or either of them, or shall have conveyed or transferred the same to any other person, with intent to defraud his creditors, the trustees aforesaid, shall have power to recover and dispose of the same, as fully and effectually, as if the said insolvent had been actually seized or possessed thereof at the time of such assignment.

SECTION 37. Personal property of the wife of any such insolvent, which shall not have been reduced by him into possession, previously to his assignment as aforesaid, shall not be deemed to vest in the said trustees, but the beneficial interest in the same, shall remain to such wife, and it shall be lawful for the court, at the time of such assignment, or at any subsequent time, to appoint a suitable person to act in her behalf, as trustee, in whom such property shall vest, for her use.

SECTION 38. Every such debtor shall be entitled, notwithstanding his assignment, in conformity to this act, to retain for the use of himself and his family, all such articles as are or may be by law exempted from levy or sale on any execution, or from distress for rent, and the property in such articles, shall not pass to his trustees.

SECTION 39. If any such debtor shall satisfy the claims of his creditors, the court shall order his estate and effects not sold, to be restored to him, or his legal representatives, and he shall by virtue of such order, be seized or possessed thereof as of his former estate, and title thereto, and if upon the final settlement of accounts by the trustees, there shall be a surplus, after payment of all the claims presented and allowed, the same shall be paid to such debtor, or his legal representatives.

VII. OF THE AFTER-ACQUIRED PROPERTY OF AN INSOLVENT.

SECTION 40. The real and personal estate acquired by any debtor, after his discharge, as aforesaid, or in which he shall

thereafter become entitled to any interest, legal or equitable, (except such as may by law be exempted from execution,) shall be subject to his debts, engagements, and other liabilities, in like manner, in all respects, as if such discharge had not taken place, and it shall be lawful for any of his creditors, to issue and execute any new or other process against such real or personal estate, for the satisfaction of their respective claims, in the same manner as they might have done if such debtor had never been taken in execution.

SECTION 41. Whenever a majority in number and value of the creditors of any insolvent, as aforesaid, residing within the United States, or having a known attorney therein, shall consent in writing, thereto, it shall be for the court by whom such insolvent shall have been discharged, upon the application of such debtor, and notice given thereof, in the manner herein before provided for giving notice of his original petition, to make an order, that the estate and effects which such insolvent may afterwards acquire, shall be exempted for the term of seven years thereafter, from execution, for any debt contracted, or cause of action existing previously to such discharge, and if, after such order and consent, any execution shall be issued for such debt, or cause of action, it shall be the duty of any judge of the court from which such execution issued, to set aside the same, with costs.

VII. OF CRIMINAL PROCEEDINGS AGAINST INSOLVENTS.

SECTION 42. If it shall appear to the court, upon the hearing of any petition, as aforesaid, either by the examination of the petitioner, or other evidence, that there is just ground to believe either—

First, That the insolvency of the petitioner arose from losses by gambling, or by the purchase of lottery tickets, or

Second, That such petitioner had embezzled or applied to his own use, any money, or other property with which he had been entrusted, either as bailee, agent, or depository, and to the prejudice of the opposing creditors, or

Third, That he has concealed any part of his estate or effects, or colluded or contrived with any person for such concealment, or conveyed the same to any person, for the use of himself, or of any of his family or friends, or with the expectation of receiving any future benefit to himself or them, and with intent to defraud his creditors, in every such case, it shall be the duty of the court to commit such person to the jail of the county, for trial at the court of Quarter Sessions of the same county.

SECTION 43. If such debtor shall, upon trial, be convicted of any of the acts mentioned in the preceding section, he shall be adjudged guilty of a misdemeanor, and shall be sentenced as follows:

- I. If found guilty of embezzlement or concealment of property, as aforesaid, he shall be sentenced to undergo an imprisonment in the penitentiary, at hard labor, for a term not less than one, nor more than seven years, at the discretion of the court.
- II. If it shall appear by the verdict of the jury on such trial, that the insolvency of the petitioner was caused by gambling, or the purchase of lottery tickets, as aforesaid, he shall be sentenced to imprisonment in the jail of the county, for a term not less than three months, nor more than three years, at the discretion of the court.

SECTION 44. If no bill shall be presented to the grand jury at the next sessions, or if the bill shall not be found, or if the indictment shall not be tried at the second session after the commitment of such petitioner, (unless the postponement or the trial take place at the instance of such petitioner,) or if upon trial, such debtor be acquitted, it shall be the duty of the court of Common Pleas to discharge him from imprisonment, upon his proceeding as is hereinbefore provided.

SECTION 45. If any person, with intent to defraud the creditors, or any of them, or any debtor, shall collude, or contrive with such debtor for the concealment of any part of his estate or effects, or for giving a false color thereto, or shall contrive or concert any grant, sale, lease, bond, or other instrument or proceeding, either in writing or by parol, or shall become a grantee, purchaser, lessee, obligee, or other like party, in any such instrument or proceeding, with the like fraudulent intent, or shall act as broker, scrivener, agent, or witness, in regard to such instrument or proceeding, with the like intent, such persons, on conviction thereof in the court of Quarter Sessions of the proper county, shall forfeit and pay a sum not exceeding ten thousand dollars, and shall suffer imprisonment for a term not more than two years, and shall moreover, forfeit all claim which he may have to any part of the estate of such debtor.

SECTION 46. If any such debtor shall be convicted of perjury, in respect to any oath or affirmation taken by virtue of this act, he shall be liable to arrest and committal, on mesne process, and to be charged in execution, in the same manner as if he had not before been arrested or taken in execution, or as if he had not made application for the benefit of this act, and moreover, such person shall never afterwards be entitled to his discharge as an insolvent debtor, by virtue of this act.

IX. WHEN RELIEF MAY BE GIVEN TO PERSONS SENTENCED BY A CRIMINAL COURT.

SECTION 47. The court of Common Pleas of any county, in which any person may be confined, by sentence or order

of any court of this commonwealth, until he restore any stolen goods or chattels, or pay the value thereof, or in which any person may be confined for nonpayment of any fine, or of the costs of prosecution, or upon conviction of fornication or bastardy, and for no other cause, shall have power to discharge such person from such confinement, on his making application, and conforming to the provisions herein before directed in the case of insolvent debtors: *Provided*, That where such persons shall have been sentenced to the payment of a fine, or after a conviction of fornication and bastardy, he shall not be entitled to make such application, until after he shall have been in actual confinement, in pursuance of such sentence, for a period not less than three months.

SECTION 48. Every person who shall be confined in any jail of this commonwealth, in execution or otherwise, for any debt, sum of money, fine or forfeiture, not exceeding in amount the sum of fifteen dollars, exclusive of costs, and who shall have remained so confined for the space of thirty days, shall be discharged from such confinement, if there be no other cause of confinement, and shall not be liable to imprisonment again for the same cause: *Provided*, that the estate and effects of such person shall, notwithstanding such discharge, be liable for such debt, or other cause of imprisonment, in like manner as before.

SECTION 49. This act shall go into effect on and after the first day of September next.

NER MIDDLESWARTH,

Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,

Speaker of the Senate.

APPROVED—The sixteenth day of June, A. D. one thousand eight hundred and thirty-six.

JOS: RITNER.